CUSTOMS BULLETIN AND DECISIONS

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Decisions, Rulings, Regulations, and Notices

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

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This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 101 and 122

CUSTOMS SERVICE FIELD ORGANIZATION
ESTABLISHMENT OF LEHIGH VALLEY PORT OF ENTRY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to Customs field organization by establishing a new port of entry in the Customs District of Philadelphia, Pennsylvania, Northeast Region. The new port of entry would be designated as Lehigh Valley and would include the Allentown-Bethlehem-Easton International Airport, which is located in Lehigh County, Pennsylvania, and currently operated as a user-fee airport. This change will assist the Customs Service in its continuing efforts to achieve more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before July 16, 1993.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th St., NW, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control, (202) 927–0456.

SUPPLEMENTARY INFORMATION:

BACKGROUND

To achieve more efficient use of its personnel, facilities, and resources, and in order to provide better services to carriers, importers, and the public in the Northeast Region, Customs proposes to amend

§ 101.3, Customs Regulations (19 CFR 101.3), by establishing a new port of entry in the Customs District of Philadelphia, Pennsylvania. The new port of entry, located in Lehigh County, Pennsylvania, would be designated as Lehigh Valley and would include the Allentown-Bethlehem-Easton International Airport (hereinafter, A-B-E), currently operating and listed in § 122.15, Customs Regulations (19 CFR 122.15, formerly § 122.39, but redesignated as § 122.15 in T.D. 92–90 (57 FR 43395)), as a user-fee airport.

The criteria used by Customs in determining whether to establish a port of entry are found in T.D. 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, a community requesting a port of entry designation must: (1) demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); (3) have a minimum population of 300,000 within the immediate service area (approximately a 70–mile radius); and, (4) make a commitment to make optimal use of electronic data transfer capabilities to permit integration with Customs Automated Commercial System (ACS), which provides a means for the electronic processing of entries of imported merchandise. Further, the actual or potential Customs workload (minimum number of transactions per year) at the proposed port of entry must meet one of several alternative minimum requirements, one of which is conditioned that no more than half of the required 2,500 consumption entries can be attributable to one private party. Lastly, facilities at the proposed port of entry must include cargo and passenger facilities, warehousing space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The proposal set forth in this document originated as a request from the Lehigh-Northampton Airport Authority that A-B-E be designated as a port of entry. With regard to the above criteria, the Airport Authority has stated that the Federal Government would benefit from the port of entry designation because A-B-E would thus be available to share the workload presently handled at ports of entry such as Wilkes-Barre, Harrisburg, Baltimore, Philadelphia, Newark or JFK International Airports. The Airport Authority further stated that A-B-E is served by 24 non-scheduled and 10 scheduled air carriers and 35 freight lines, and that U.S. Route 22 provides highway access to A-B-E. The population of the Lehigh County-area is stated to be 291,130 and that of the adjacent Northampton County-area is 247,105, for a total of 538,235 which is well above the minimum 300,00 required. Further, the Airport Authority pointed out that the surrounding counties of Carbon, Bucks, Monroe, and Berks offered a combined additional population of 1,025,000. The number of formal Customs entries in fiscal year 1991 was 2,687, with a representation that no more than 47.8% were attributable to one private party. Regarding electronic data transfer capabili-

ties, it was stated that two Automated Broker Interface (ABI) brokers currently maintain offices at A-B-E and that an additional thirteen brokers have provided services there. Lastly, since A-B-E is currently a Customs user fee airport, it was stated that office, storage, and examination space are currently available and utilized by Customs. The district director at Philadelphia has verified that A-B-E's entries for the year 1991 exceed 2,500 formal entries, and the Regional Commissioner for the Northeast Region has advised that A-B-E appears to meet the criteria for port of entry status.

Based on the above, Customs believes that there is sufficient justification for establishment of the requested port of entry; that A-B-E meets an appropriate combination of the workload criteria specified, and that the necessity for the new facility is justified.

Description of Port of Entry Limits

The geographical limits of the proposed Lehigh Valley port of entry would be as follows:

> In Lehigh County, Pennsylvania, beginning at the intersection of Pennsylvania Route 987 and Race Street and proceeding south along Pennsylvania Route 987 to the Lehigh Valley Thruway (U.S. Route 22), and then southwest along the Lehigh Valley Thruway to the Lehigh River, and then north along the Lehigh River to where it meets Race Street, and then northeast along Race Street to the point of beginning.

Proposed Amendments

If the proposed port of entry designation is adopted, the list of Customs regions, districts, and ports of entry at § 101.3 will be amended to include Lehigh Valley as a port of entry in the Customs District of Philadelphia, and the Allentown-Bethlehem-Easton Airport will be deleted from the list of user-fee airports in § 122.15.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 4th floor, 1099 14th St., NW, Washington, DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* For the same reasons stated above, this proposal is not subject to a regulatory impact analysis under Executive Order 12291.

DRAFTING INFORMATION

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

MICHAEL H. LANE,
Acting Commissioner of Customs.

Approved: April 23, 1993.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 17, 1993 (58 FR 28803)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Dominick L. DiCarlo

Judges

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Jane A. Restani
Thomas J. Aquilino, Jr.
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R. Kenton Musgrave
Richard W. Goldberg

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James L. Watson

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Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 93–66)

FORMER EMPLOYEES OF FINA OIL & CHEMICAL CO., PLAINTIFFS *v.* U.S. SECRETARY OF LABOR, DEFENDANTS

Court No. 89–07–00410 and 92–12–00794

[Motion to Dismiss Court No. 92–12–00794 granted. Judgment of Dismissal in Court No. 89–07–00410 vacated.]

(Dated May 3, 1993)

Paul T. Duncan, pro se for plaintiffs.

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, *(Cynthia B. Schultz), Scott Glabman*, U.S. Department of Labor, of counsel, for defendant.

MEMORANDUM AND ORDER

GOLDBERG, *Judge:* Defendant's motion to dismiss Court No. 92–12–00794 is granted. The court, sua sponte, vacates the judgment of dismissal issued in Court No. 89–07–00410.

BACKGROUND

On July 10, 1989, plaintiffs Donald J. Hickombottom, Jerry F. Bowen, Jr., and Paul T. Duncan[1] filed a complaint with this court on behalf of former employees of the Fina Oil & Chemical Company. *See Former Employees of Fina Oil and Chemical Company v. United States Secretary of Labor,* Court No. 89–07–00410 ("Fina Oil I"). The complaint alleged that the United States Department of Labor ("Labor") improperly denied reconsideration of its negative determination regarding eligibility for Trade Adjustment Assistance. The denial was published in the Federal Register on May, 12, 1989. *Fina Oil and Chemical Co.; Corpus Christi, TX,* 54 Fed. Reg. 20,652 (Dept Labor 1989) (Negative Application for Reconsideration Determination). Defendant duly answered the complaint on August 31, 1989. Plaintiffs Hickombottom, Bowen, and Duncan were each served with defendant's answer.

Fina Oil I was assigned to Judge Aquilino of this court on July 31, 1989. The court subsequently attempted to arrange a conference to

[1] Plaintiff Duncan alone filed the complaint in the second action entitled *Former Employees of Fina Oil and Chemical Company v. United States Secretary of Labor,* Court No. 92–12–00794, on behalf of the former employees.

schedule the action for disposition by communicating in writing and by telephone with plaintiff Hickombottom **alone,** on behalf of plaintiffs. However, plaintiff Hickombottom failed to respond or otherwise indicate a desire to prosecute the action. The court therefore dismissed the action on September 12, 1990.

On December 4, 1992, plaintiff Duncan filed a complaint on behalf of former employees of Fina Oil and Chemical Company in the action entitled *Former Employees of Fina Oil and Chemical Company v. United States Secretary of Labor,* Court No. 92–12–00794 ("Fina Oil II"). In the complaint, plaintiff Duncan challenged the identical denial of eligibility for Trade Adjustment Assistance to the former employees of the Fina Oil & Chemical Company as alleged in Fina Oil I.

On December, 17, 1992, defendant moved to dismiss Fina Oil II on the grounds that court lacked jurisdiction because the complaint was filed beyond 60 days from the date in which reconsideration was denied.

Plaintiff Duncan opposed defendant's motion to dismiss on the grounds that he was prevented from participating in the prosecution of Fina Oil I. Plaintiff Duncan asserts that in regard to the scheduling conference, "[o]nly one plaintiff, Mr. Hickombottom, was notified of this scheduled telephone conference * * *. I received no notification of any kind either from the defendant or Mr. Hickombottom." Plaintiff Duncan's Sur-Reply to Defendant's Reply to its Motion to Dismiss ("Sur-Reply") at 1. Moreover, despite repeated efforts by plaintiff Duncan between 1990 and 1992, he could not obtain information from plaintiff Hickombottom regarding Fina Oil I. Consequently, plaintiff Duncan explained that:

> after being promised by Mr. Hickombottom for many months to be supplied with all documents and notes he possessed, I despaired of Mr. Hickombottom supplying the information I needed to continue the case so [I] instituted an appeal on my own so that I would not be dependant on a co-plaintiff who simply is unable or unwilling to cooperate.

Sur-Reply at 2.

Discussion

Title 19 of United States Code, Section 2395(a) (1988) provides that:

> [a] worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 2273 of this title * * * may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination.

Similarly, Labor's implementing regulations state that "[t]he party seeking judicial review must file for review in the Court of International Trade within sixty (60) days after the notice of determination has been published in the Federal Register." 29 C.F.R. 90.19(a) (1992).

In *Kelley v. Secretary, United States Dep't of Labor,* 5 Fed. Cir. (T) 87, 812 F.2d 1378 (1987), the court found that litigants proceeding pro se are not excepted from the sixty day filing limitation.

The court finds that Fina Oil II was filed on December 4, 1992, well beyond 60 days from Labor's publication in the Federal Register on May, 12, 1989 of its denial of reconsideration. Consequently, the court is constrained to grant defendant's motion to dismiss Fina Oil II.

However, USCIT R. 60(b) provides that:

> upon its own initiative and upon such terms as are just, the court may relieve a party * * * from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; * * * or (6) any other reason justifying relief from the operation of the judgment.

The court determines that sufficient grounds exist to vacate the judgment of dismissal in Fina Oil I. The court emphasizes that "leniency with respect to mere formalities should be extended to a pro se party * * *." *Kelley,* 5 Fed. Cir. (T) at 89. In this case, the record shows that although plaintiff Duncan was specifically listed in the complaint on behalf of plaintiffs, neither defendant nor the court contacted him when arranging the scheduling conference. Plaintiff Duncan was also not served with a dismissal in Fina Oil I. Further, despite several attempts by plaintiff Duncan, plaintiff Hickombottom failed to notify plaintiff Duncan of the status of Fina Oil I.

The court finds, therefore, that plaintiff Duncan, a pro se litigant, reasonably attempted to ascertain the status of Fina Oil I, but was prevented from participating in its prosecution, or from learning of its dismissal.

Accordingly, upon such good cause, the court, sua sponte, sets aside the judgment of dismissal entered on September 12, 1990 in *Former Employees of Fina Oil and Chemical Company v. United States Secretary of Labor,* Court No. 89–07–00410.

CONCLUSION

Therefore, for the reasons provided above:

IT IS HEREBY ORDERED THAT defendant's motion to dismiss the action entitled *Former Employees of Fina Oil and Chemical Company v. United States Secretary of Labor,* Court No. 92–12–00794 is granted and the action is dismissed;

IT IS FURTHER ORDERED THAT the judgment of dismissal in the action entitled *Former Employees of Fina Oil and Chemical Company United States Secretary of Labor,* Court No. 89–07–00410 is set aside;

IT IS FURTHER ORDERED THAT plaintiff Paul T. Duncan shall also be served by defendant and the court on behalf of plaintiffs with all papers and documents filed in these actions.

(Slip Op. 93–67)

SURAMERICA DE ALEACIONES LAMINADAS, C.A., CONDUCTORES DE ALUMINIO DEL CARONI, C.A., INDUSTRIA DE CONDUCTORES ELECTRICOS, C.A., AND CORPORACION VENEZOLANA DE GUAYANA, PLAINTIFFS *v.* UNITED STATES, U.S. INTERNATIONAL TRADE COMMISSION, AND U.S. DEPARTMENT OF COMMERCE, DEFENDANTS, AND SOUTHWIRE CO., DEFENDANT-INTERVENOR

Court No. 88–09–00726

[Defendant's motion for stay of remand pending appeal is denied]

(Dated May 4, 1993)

Arnold & Porter (Patrick F.J. Macrory, Michael Faber, Claire E. Reade, Edward Sisson); Shearman & Sterling (Thomas B. Wilner, Jeffrey M. Winton) for plaintiffs.

Stuart E. Schiffer, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(M. Martha Ries Michael Kane); Lynn M. Schlitt*, General Counsel, United States International Trade Commission; *James A. Toupin*, Assistant General Counsel, United States International Trade Commission *(Stephen A. McLaughlin, Carol McCue Veratti); Robert H. Brumley*, General Counsel, U.S. Department of Commerce for defendants.

Wigman, Cohen, Leitner & Myers, P.C. (Victor M. Wigman, Ralph C. Patrick, Dorothy H. Patterson); McKenna, Conner & Cuneo (Peter Buck Feller, Lawrence J. Bogard) for defendant-intervenor.

Baker & McKenzie (William D. Outman II, Arthur L. George) for General Electric Co., *Amicus Curiae* in support of plaintiffs.

MEMORANDUM OPINION AND ORDER

MUSGRAVE, *Judge:* Defendant United States International Trade Commission (the Commission) moved on April 27, 1993 for a Stay of the Remand Order (dated March 15, 1993) and Entry of Judgment pending appeal of this Court's decision contained in Slip Op. 93–35 (March 15, 1993) to the Court of Appeals for the Federal Circuit. Defendant has not cited any authority for its motion. The Court presumes that defendant is moving pursuant to USCIT Rule 62(d) ("Stay Upon Appeal"). The Court notes that granting the stay is within the discretion of the Court. *See American Grape Growers Alliance for Fair Trade v. United States,* 9 CIT 505, (1985).

Defendant's motion for a stay is premised on the assertion that the Court's remand instructions in Slip Op. 93–35 (March 15, 1993) "effectively leave no discretion but to rescind the original affirmative threat determination." *Defendant's Motion for Stay of the Remand Order (dated March 15, 1993) and Entry of Judgment Pending Appeal* at 2. The Court disagrees. If the Commission can find support in the record for its determination, it may make whatever determination on remand its discretion allows. This Court has merely provided the Commission with a second opportunity to explain how its conclusions with respect to certain findings were based on substantial evidence from the record. As this Court noted in Slip Op. 93–35, "[in] reviewing injury, antidumping, and countervailing duty investigations and determinations, this Court

must hold unlawful any determination unsupported by substantial evidence on the record * * *." 19 U.S.C. § 1516a(b)(1)(B) (1982 & Supp. 1992).

A second reason for the need to appeal raised by the defendant is that the opinion offers no guidance due to an "apparent split within the CIT on the weight that support for the petition by the domestic industry is given regarding injury determinations." *Defendant's Motion for Stay of the Remand Order (dated March 15, 1993) and Entry of Judgment Pending Appeal* at 3. This Court held that "[a]bsent compelling evidence of threat, it is not reasonable to conclude that the domestic industry is threatened when a majority opposes or does not support that finding." *Suramerica de Aleaciones Laminadas, C.A. v. United States,* ____ CIT ____, Slip Op. 93–35 at 26 (for detailed discussion see 24–29) (March 15, 1993). Defendant asserts that it received different guidance from this Court in *Minebea Co., Ltd. v. United States,* 16 CIT ____, ____, 794 F. Supp. 1161, 1164–65 (1992) (upholding Commission finding of material injury where majority of domestic spherical plain bearing industry opposed petition), *aff'd Minebea Co., Ltd. v. United States,* Slip Op. 92–5, CAFC Docket No. 92–1289, (January 26, 1993).

The Minebea Court stated that, "when the ITC is determining whether LTFV imports are a cause of material injury suffered by a U.S. industry, the position of any segment of the U.S. industry as to the cause of its difficulties is not something which the ITC is required to consider." *Minebea,* 794 F. Supp. 1165. This statement is *dictum* (defendant seems prefer "guidance") because Minebea did not challenge the Commission's findings on the basis that they were not supported by substantial evidence.

The question before this Court in *Suramerica,* Slip Op. 93–35, *viz* whether the Commission's finding of threat was based on substantial evidence, was not before the *Minebea* Court. Therefore, this Court concludes that there is no controlling question of law involved in the interlocutory order of remand, Slip Op. 93–35, with respect to which there is a difference of opinion on this Court. Immediate appeal from that remand order is not likely to advance the ultimate termination of the litigation. Accordingly, it is hereby

ORDERED that Defendant's Motion for Stay of the Remand Order (dated March 15, 1993) and Entry of Judgment Pending Appeal is denied.

(Slip Op. 93–68)

BÖWE-PASSAT, ET AL., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 92–01–00058

[*Held:* This matter is remanded to the ITA for reconsideration of supplemental information submitted by plaintiff.]

(Dated May 7, 1993)

Barnes, Richardson & Colburn (Rufus E. Jarman, Jr., and *Ronald A. Oleynik)* for plaintiff.

Stuart E. Schiffer, Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Patricia L. Petty), Mary P. Michael,* Import Administration U.S. Department of Commerce for defendant.

OPINION

MUSGRAVE, *Judge:* Plaintiff Böwe-Passat ("Böwe") brings this action to supplement the record in this case and to remand this case to the Department of Commerce ("DOC") for reconsideration of its decision on the record as supplemented.

Following a request for an administrative review concerning German dry cleaning equipment, Commerce published a notice of initiation of the administrative review contested in this case on December 12, 1990. *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 56 Fed. Reg. 51742 (1990). In the underlying annual review proceeding, Böwe made a number of claims for direct expenses in the home market to reduce the Foreign Market Value ("FMV") of the merchandise under review, or to include he calculation of a level of trade ("LOT") adjustment. The expense categories involved his motion are Advertising, Order Entry and Control, Sales Department, Technical Publications, Traffic/Shipment Department, and finally Sales Related General, Administrative and Management Expenses.

On December 24, 1990, a questionnaire was forwarded to Böwe. In a letter accompanying the December 24, 1990 questionnaire, Commerce stated that "[a]ny submissions submitted in an untimely manner *will be rejected* and will not be considered part of our record" (emphasis in the original). *Administrative Record ("A.R.")* 4 at 1. The listed claims were made in timely fashion in Böwe's questionnaire response dated March 1, 1991. The Department sent Böwe a so-called "deficiency letter" dated April 11, 1991 requesting further information and clarification of Böwe questionnaire response. Böwe supplied the requested additional information in a timely fashion. Böwe claims there was no reference in the deficiency letter to any of the expense categories at issue in this motion. *See DOC Letter of April 11, 1991, A.R. 10.* Rather, Böwe asserts, the deficiency letter alerted Böwe to insufficiencies regarding certain other claims for direct expense cost adjustments *(e.g.,* "home market sales office expenses") and requested further information with respect to those claims. *See id.* The Department claims that letter did refer to those cate-

gories by requesting to identify and quantify the expense categories and the elements of Böwe's proposed level of trade adjustment. *Defendant's Opposition to Plaintiffs' Motion to Supplement the Record and Remand* at 10 n. 7. The pertinent text of the April 11, 1991 letter follows:

> This concerns the antidumping finding on drycleaning machinery from Germany and your response dated March 1, 1991.
>
> * * * * * * *
>
> 3. For the home market sales office expenses please separately identify and quantify the expense categories.
>
> * * * * * * *
>
> 5. For each model sold in the United States please clarify and quantify the elements of your proposed level-of-trade adjustment.
>
> * * * * * * *

A.R. 10.

On August 12, 1991, Commerce published notice of its preliminary determination. 56 Fed. Reg. 38112. *A.R. 15.* In the preliminary determination, Commerce rejected Böwe's claim hat certain expense categories should be treated as direct expenses. *Id.* at 38113. As noted above the parties disagree as to whether those categories were mentioned by Commerce in its April 11, 1991 deficiency letter. In Böwe's view, it complied with Commerce's additional request only to find that it had failed to adequately substantiate its expenses at the preliminary determination for lack of sufficient proof of items Commerce did not request by way of item five of its deficiency letter. Commerce asserts that it is not required to indicate insufficiencies in the submissions of parties to antidumping proceedings and in any event, item five constituted notice that all the categories at issue in this motion (*e.g.*, Advertising, Order Entry and Control) were insufficiently proven as of the issuance of the deficiency letter. Commerce argues that the tender of the compendium was nothing more than a belated attempt to satisfy Böwe's burden of proof.

Böwe requested a hearing the same day that the preliminary results were issued. Commerce held a hearing on October 23, 1991. *A.R. 14.* The domestic producer declined to attend. During the hearing, Böwe tendered supplementary documents at issue in this action in an attempt to corroborate the previous responses in its questionnaire, that Böwe claims were not in the deficiency letter but that the Department now found to be deficient. *Plaintiff's Memorandum (on Administrative Review), Exhibit A.* The hearing examiner reserved the right to ignore any new information in Böwe's pre-hearing brief, including any new information brought into the hearing. *A.R. 18* at 5.

On December 26, 1991, Commerce published notice of its final results of administrative review. 56 Fed. Reg. 66838. *A.R. 22.* The Department held that Böwe had submitted *unsolicited factual information* in its pre-hearing brief dated October 9, 1991. *Id.* at 66389. The Department decided not to accept or consider the supplemental information, "whether characterized as supplementing, explaining or supporting previously

submitted data or information * * *", because the information had been submitted after the time limit specified in 19 C.F.R. § 353.31 for the creation of the record.[1] *Id.*

19 C.F.R. § 353.31(a)(1) provides that

> Submissions of factual information for the Secretary's consideration *shall* be submitted not later than:
>
> * * * * * * *
>
> (ii) For the Secretary's final results of an administrative review under § 353.22(c) or (f), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice or initiation of the review * * *.

(Emphasis added). Commerce contends that since the supplementary information was submitted by Böwe more than two months *after* the issuance of the preliminary determination, and more than 180 days after December 12, 1990, the date of publication of he notice of initiation of the review, the information contravened Commerce's regulations and therefore could be rejected. *Defendant's Opposition to Plaintiff's Motion to Supplement the Record and Remand* at 5–7.

Neither party contests that Commerce normally has the discretion to accept or reject untimely filed submissions such as those submitted in this action. Commerce routinely accepts and rejects untimely filed submissions depending on the circumstances of each case. What is in dispute is whether Commerce's rejection of Böwe's supplementary information in this case was reasonable or not, in light of the wide breadth of discretion normally afforded Commerce in applying its regulations. Indeed, Commerce argues that its discretion is absolute to reject untimely submitted information by reason of section 353.31. The Court, however, cannot reconcile the language of section 353.31 with Commerce's own practice regarding that section. The language is mandatory, yet Commerce applies the section as if it were discretionary, routinely admitting data after the deadlines. The Court is thus left to assess whether Commerce abused the wide discretion afforded to it in enforcing the timing provisions of its regulations. In this case, the Court finds that the ITA acted arbitrarily and capriciously in rejecting Böwe's supplemental explanatory information. The Court bases its decision on the language of section 353.31, the ITA's own precedent, policy, and the narrow facts of this case.

The Court shall hold unlawful any determination, finding, or conclusion found * * * to be unsupported by substantial evidence on the record, or otherwise not in accordance with law. *See* 19 U.S.C. § 1516a(b)(1) (1992). In determining whether to sustain the agency's construction of its regulations or the antidumping statute, the Court need not find Commerce's interpretation to be the only reasonable one, or even the one that the Court views as most reasonable. *See Zenith Ra-*

[1] *Id.* The "record" is defined by statute as "a copy of all information presented to or obtained by [the agency] during the course of the administrative proceeding * * *." 19 U.S.C. § 1516a(2)(A) (1992).

dio Corp. v. United States, 437 U.S. 443, 450 (1978); *ICC Industries, Inc. v. United States*, 812 F.2d 694 (Fed. Cir. 1987). "Substantial deference is granted to the agency in both its interpretation of its statutory mandate and the methods it employs in administering the antidumping law." *Chemical Products Corp. v. United States*, 645 F. Supp. 289, 291 (CIT 1986). This Court will sustain the agency's interpretation of a valid regulation if it "was reasonable and neither arbitrary nor in violation of the law." *Melamine Chemicals Inc. v. United States*, 732 F.2d 924, 933–34 (Fed. Cir. 1984).

The plain language of section 353.31 indicates that Commerce does not have the discretion to accept untimely information. Section 353.31(a) mandates that factual information "shall be submitted not later than" certain operative events or dates. Section 353.31(a)(2) provides for the submission of factual information to rebut, clarify or correct "at any time prior to the deadline provided in this section for submission of such factual information * * *." Section 353.31(a)(3) provides that the "Secretary will not consider in the final determination or the final results * * * any factual information submitted after the applicable time limit." Section 353.31(b)(2) concerning Questionnaire responses provides that the "Secretary normally will not consider or retain in the record of the proceeding unsolicited questionnaire responses, and in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination."

Yet Commerce does accept information despite these regulations. *See Roller Chain, Other Than Bicycle, from Japan* (Investigation A–588–028) 57 Fed. Reg. 56319, 56320 (November 27, 1992). Even the Department has had difficulty, from time to time, meeting he statutory deadlines of these proceedings. Commerce, by its own practice, has tempered the unconditional nature of the above regulations. Nonetheless, the burden on the-party attempting to submit untimely information remains high indeed. In this instance, however, where the party fully cooperated and relied on Commerce's request for additional information, Commerce has decided not to accept the supplemental information.

Upon review of the questionnaires and responses, the Court finds that Böwe's response to Commerce's deficiency letter was reasonably calculated in good faith to comply with the demands of that letter. If Commerce did not so find, or if Commerce considered other information not in the deficiency letter insufficient, the only reasonable way Böwe could comply with the demands of the annual review would be for Commerce to signal to it how its diligent efforts were inadequate – especially since a deficiency letter was sent requesting specific information unrelated to the information the ITA ultimately held to be insufficient. In so finding, the Court does not reverse the burden of proof, which remains squarely with the plaintiff. On the other hand, the review process is bilateral and

interactive. The party must be afforded a reasonable opportunity, however, to meet its burden and to satisfy evidentiary concerns known only by the ITA staff.

Moreover, as plaintiff points out, Commerce has accepted similar data in other situations. *See Plaintiff's Reply to Defendants' Response* at 3. Commerce has accepted information submitted after publication of preliminary results stating that "[the new information] simply clarifies information that is already on the record and does not constitute an untimely submission of new information." *Roller Chain, Other Than Bicycle, from Japan* (Investigation A–588–028) 57 Fed. Reg. 56319, 56320 (November 27, 1992); *See* 19 C.F.R. § 353.31(a)(2) ("Any interested party * * * may submit factual information to rebut, clarify, or correct factual information submitted by an interested party * * * at any time prior to the deadline provided in this section for submission of such factual information * * *.").

Indeed, Commerce has exhibited such flexibility in adjusting for more accurate or otherwise appropriate figures already in this action:

> Boewe [Böwe] claims that the Department made certain clerical errors that should be corrected, including omissions or errors involving options, miscellaneous expense deductions, sale dates, exchange rates, physical differences, and inventory carrying charges for ESP sales * * * We agree and have recalculated our results accordingly.

56 Fed. Reg. 66838, 66840. Those reasonable readjustments had the effect of reducing the preliminary finding of a 6.00 percent dumping margin down to a mere 0.64 percent – 0.14 percent above the margin at which the Department considers the dumping to be *de minimis* and does not pursue enforcement of the claimed antidumping margin. Yet the ITA was steadfast in rejecting Böwe's compendium of supplementary information offered in good faith in its pre-hearing brief and, at the hearing itself, in order to rectify the Department's perceived inadequate support for the data previously supplied.

The Court recognizes the potential conflict of policies in these circumstances. The Commerce Department clearly cannot complete its work unless it is able at some point to "freeze" the record and make calculations and findings based on that fixed and certain body of information. On the other hand, the antidumping and countervailing duty laws are designed to favor disclosure and cooperation. For example, a powerful tool in the hands of the Commerce Department to extract information from parties is 19 U.S.C. § 1677e(c) (1992), otherwise known as "best information available" or "BIA":

> In making their determinations under this subtitle, the administering authority and the [DOC] shall, whenever a party or any other person refuses 41 or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

This "best" information is almost uniformly disadvantageous to the party that did not provide the data requested, so there is a strong incentive to disclose. For example, in the Preliminary Review in this action, Commerce stated that "[s]ince one of the companies, Seco, failed to respond to our questionnaire, for Seco we used 6.00 percent as BIA, the highest rate in this review, which is higher than any of Seco's prior rates." 56 Fed. Reg. 38112, 38113. In contrast, Böwe cooperated fully, providing detailed responses in apparent good faith The Department opted not to conduct verification in Böwe's case, presumably based on the completeness and integrity of Böwe's submissions and its cooperation.

In the end, the proper administration of dumping laws is best ensured by "fair and accurate" determinations. *See NSK, Ltd. v. United States,* 16 CIT ____, 798 F. Supp. 721, 724 (1992); *Industrial Quimica Del Nalon, S.A. v. United States,* 13 CIT 1055, 1060, 729 F. Supp. 103, 108 (1989). The Committee Report to H.R. 4784, regarding the Trade and Tariff Act of 1984, stated the following concerning amendment of the verification provisions of the Act: "The Committee * * * believes it essential for the proper enforcement of the laws that information used in determining annually the actual amount of any * * * antidumping duty to be assessed under outstanding orders is accurate to the extent possible." H.R. Rep. No. 72 at 43 (May 1, 1984). Commerce has frustrated the purpose of the antidumping laws by refusing the supplemental information offered by plaintiff in this case.

Another often competing goal of the Act was to promote the interest of administrative economy during reviews of antidumping orders. H.R. Rep. No. 725 at 22–23. At first blush, administrative economy would be well served by the strict enforcement of deadlines. In this case, however, the ITA position in this action would encourage Respondents to swamp the agency with documentation in support of respondent's claims, because respondents are not told and cannot know to what extent they have not provided sufficient documentation for a given claim. As noted above, the Department did send a deficiency letter in this case regarding some information; but the letter requested specific information not related to the vague request for information, the response to which the Department found to be deficient and that may well have led to the antidumping determination that was 0.14 above the *de minimis* level. When Böwe was made aware of the Department's view of the deficiency, it offered the Department a compendium of documents providing detailed back-up support for the expense categories previously submitted that the Department now deemed insufficiently proven.

Böwe's compendium is not unlike the model-match clarifications that the Department allowed *after* the preliminary results in *Roller Chain, Other Than Bicycle, from Japan.* It "simply clarifies information that is already on the record * * *." *Id.,* 57 Fed. Reg. 56319, 56320. That is, Böwe's supplementary compendium does not purport to substitute or modify figures previously timely submitted for Commerce's calcula-

tions; it merely provides the information in a format that Commerce is more likely to accept. Thus, according to the ITA's own guidelines, the supplemental information "does not constitute an untimely submission of new information." *Id.*

The Department notes that this Court has observed that the "submission of detailed factual information at the pre-hearing brief stage of an administrative review is clearly untimely under any circumstances." *NSK, Ltd. v. United States,* 16 CIT ____, 798 F. Supp. 721, 724 (1992). While that is a reasonable interpretation of 19 C.F.R. § 353.31(a) (1991), it does not address whether circumstances dictate that the "untimely" information be accepted nonetheless. In *Nsk,* the information that was rejected was new data that contradicted plaintiffs previous, albeit mistaken, submission. In contrast, Böwe's supplementary information was tendered merely to corroborate claims and data previously timely submitted by Böwe.

The Department also cites *Win-Tex Products, Inc. v. United States,* 16 CIT ____, Slip Op. 92–142 at 5–6 (August 26, 1992) for the proposition that information submitted subsequent to the pre-hearing brief stage is untimely. In *Win-tex,* however, the Court admonished the plaintiff for failing to exercise "diligence in seeking to include the proposed supplemental materials * * *" despite Commerce's warning that those specific supplemental materials might not already be considered included in the record. *Id.* In contrast, Böwe attempted throughout the underlying proceedings to supply Commerce with the information it needed to make an informed decision.

Likewise, the Department's reliance on *Asociacion Colombiana de Exportadores de Flores v. United States* is unwarranted. Although this Court upheld the rejection of untimely submitted information in that case, Commerce had sent *three* deficiency letters specifically requesting the information *and* had conducted verification. *Asociacion Colombiana de Exportodores de Flores v. United States,* 13 CIT 13, 22–24, 704 F. Supp. 1114, 1123–24 (1989), *aff'd,* 901 F.2d 1089 (Fed. Cir. 1990), *cert. denied,* 498 U.S. 848, 111 S. Ct. 136 (1990) (holding that Commerce did not abuse its discretion in refusing to recalculate the margin when he "error made by ITA is attributable to plaintiffs' late submission of ambiguous information"). Commerce's solicitation of information falls far short of that in the case at bar, even though as the *Asociacion Colombiana de Exportadores de Flores* Court noted, "[d]eficiencies in questionnaire response are not unexpected. ITA normally sends a deficiency letter in such situations in order to clarify its request." *Id. at 1122.*[2]

Defendant argues that Commerce is not required by statute or regulation to point out deficiencies in questionnaire responses. Similarly, it is well established that "plaintiffs have the burden of demonstrating to

[2] The defendant also cited another clerical error case, *Technoimportexport v. United States,* 766 F. Supp. 1169, 1178 (CIT 1991). The case centered on the reasonableness of the Commerce Department's interpretation as to when it would, and when it would not, accept untimely information to correct a clerical error. Unlike this case verification had taken place and the corrections were submitted to Commerce a mere eleven days before the issuance of the final determination.

[Commerce] that they are entitled to a circumstance of sales adjustment for expenses directly related to sales." 19 U.S.C. § 1677b(a)(4)(B) (1992); *see Rhone Poulenc, S.A. v. United States,* 8 CIT 47, 64, 592 F. Supp. 1318, 1333 (1984). Even in *Rhone Poulenc,* however, verification was conducted and there was an open dialogue between the ITA and the party in which the ITA indicated that it sought more information regarding sales expenses. *See id.,* at 1333–35.

The legislative history indicates that circumstance-of-sale adjustments "should be permitted if they are reasonably identifiable, quantifiable, and directly related to the sales under consideration and if there is clear and reasonable evidence of their existence and amount." H.R. Rep. No. 317, 96th Cong., 1st Sess. 76 (1976). *See Defendant's Opposition to Plaintiff's Motion to Supplement the Record and Remand.* At least as far as "circumstance-of-sale" adjustments are concerned, the proof must be established to the satisfaction of the administering authority * * *." 19 U.S.C. § 1677b(a)(4)(B). It is not possible to know the level of detail needed to satisfy the DOC's requirement for a particular cost adjustment when the DOC is silent. This is especially true where the DOC chose not to conduct verification, as in the matter at bar. The parties must be given a *reasonable* opportunity to satisfy their burden, for this adjustment or for the others at issue in this case.

Although item five of the DOC deficiency letter of April 11, 1991 did indicate the need for more level of trade information, the deficiency letter is only part of a procedure which, when fairly applied, is reasonably well calculated to obtain accurate results with reasonable fairness to all parties. This procedure may includes questionnaire, response, deficiency letters(s), response(s), verification and hearing. Böwe, in its response to the April 11 1991 deficiency letter did "quantify and clarify" level of trade information, breaking it down into categories even though the deficiency letter did not specify any category that was deficient. *See A.R. 10.* When Commerce found in the preliminary determination that what Commerce had originally requested was insufficient, Böwe diligently presented further breakdowns for the figures that Commerce had found to be insufficiently substantiated. Commerce rejected that support documentation.

In the case at bar, the ITA would have this Court endorse an investigation where the ITA sent out a general questionnaire and a brief deficiency letter, then effectively retreated into its bureaucratic shell, poised to penalize Böwe for deficiencies not specified in the letter that the ITA would only disclose after it was too late, *i.e.,* after the preliminary determination. This predatory "gotcha" policy does not promote cooperation or accuracy or reasonable disclosure by cooperating parties intended to result in realistic dumping determinations. Rather, this behavior encourages parties to front-load investigations with all manner of unnecessary information to back up their claims. The ITA's behavior was all he more unreasonable in this case because Böwe was misled into believing that it had satisfied its burden regarding certain expenses by

the absence of specific mention or concern for those items in the deficiency letter Commerce did decide to issue.

In conclusion, based on and limited to the specific circumstances of this case, the Court finds that the Department of Commerce enforced its regulations in an arbitrary and capricious way in refusing to accept the compendium of information that plaintiff tendered to support its expense claims. Commerce's decision was not based on substantial evidence or otherwise in accordance with the law. Accordingly, this matter is remanded to the ITA so that the ITA may revisit its dumping margin of 0.64 percent, based on consideration of he record as amended by the compendium tendered by plaintiff.

The ITA shall report back to the Court with the results of its redetermination in accordance with this opinion within 90 days. Böwe will thereafter have 15 days in which to file a brief on the remand results with the Court. Defendant and the domestic producer shall file a reply within 15 days after receipt of Böwe's brief.

(Slip Op. 93–69)

ELKTON SPARKLER CO., PLAINTIFF *v.* U.S. DEPARTMENT OF COMMERCE AND UNITED STATES, DEFENDANTS, AND GUANGXI NATIVE PRODUCE IMPORT & EXPORT CORP., BEIHAI FIREWORKS AND FIRECRACKERS BRANCH, DEFENDANT-INTERVENOR

Court No. 91–07–00501

Defendant-intervenor challenges the results of remand determination of antidumping investigation of sparklers from the People's Republic of China, contesting (1) Commerce exceeded the scope of the remand order; and (2) the use of best information available was contrary to the law.

Held: Commerce did not exceed the scope of the remand order because the order did not restrict Commerce's authority of the verification on remand. The use of best information available was proper because defendant-intervenor's submission of information was untimely.

[Judgment for defendants. Action dismissed.]

(Decided May 7, 1993)

Barnes & Thornburg (Richard H. Streeter), Morgan, Lewis & Bockius (Marcela B. Stras) for plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General, *David M. Cohen,* Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(A. David Lafer), Dean A. Pinkert,* Attorney-Advisor, Office of Chief Counsel for Import Administration, Department of Commerce, of counsel, for defendants.

Akin, Gump, Strauss, Hauer & Feld, L.L.P. (Spencer S. Griffith) for defendant-intervenor.

MEMORANDUM OPINION

DICARLO, *Chief Judge:* Defendant-intervenor, Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecrackers Branch (Guangxi), challenges the Department of Commerce's remand

determination in the antidumping investigation of sparklers from the People's Republic of China. Guangxi raises two issues: (1) whether Commerce exceeded the scope of the court's remand order; and (2) whether the use of best information available (BIA) was appropriate. The court has jurisdiction under 19 U.S.C. § 1516a(a)(2) (1988) and 28 U.S.C. § 1581(c) (1988).

BACKGROUND

Plaintiff, a domestic manufacturer, filed this action contesting the results of the final less-than-fair-value (LTFV) determination. *See Sparklers From the People's Republic of China*, 56 Fed. Reg. 20,588 (Dep't Comm. 1991). The court granted the joint motion for remand by plaintiff and defendants to have Commerce conduct verifications of the questionnaire responses submitted by Guangxi and another respondent which were not verified in the original LTFV investigation.

During the verification, Commerce discovered that Guangxi did not report in its questionnaire responses the factors of production required in printing and cutting, fibre board into small packets or "caddies." Although Guangxi attempted to submit this information during the verification, Commerce did not accept the new information. In the remand determination, Commerce used the value of Indian caddies as BIA. The remand determination increased Guangxi's dumping margin from 1.64% to 41.75%. Thereafter, Guangxi intervened challenging the remand results and moves for a second remand.

DISCUSSION

The court shall hold unlawful any determination which is "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B) (1988).

1. Whether Commerce exceeded the scope of the court's remand order.

The court's remand order stated, in pertinent part:

> [T]his action is remanded to the Department of Commerce in order that it may conduct a verification of:
>
> * * * * * * *
>
> (2) Guangxi Native Produce Import and Export Corporation, Beihai Fireworks and Firecrackers Sub-Branch and its supplier company Beihai Second Fireworks Factory, Beihai, China * * *.

Order, Court No. 91–07–00501 (Dec. 30, 1991).

Guangxi argues that the remand order did not authorize the investigation of new issues because it was narrowly worded to permit Commerce to conduct a verification of Guangxi's questionnaire responses only. According to Guangxi, Commerce could not consider the information not relied on in its original margin calculation because the remand order concerned Commerce's failure to verify Guangxi's responses. Since Commerce investigated the issue of caddies which Commerce did

not consider in the LTFV determination due to its absence from Guangxi's questionnaire responses, Guangxi claims that Commerce exceeded the scope of the remand order.

The court disagrees. In conducting verification, Commerce "has considerable latitude in picking and choosing which items it will examine in detail." *Monsanto Co. v. United States,* 12 CIT 937, 944, 698 F. Supp. 275, 281 (1988) (citation omitted). When the action was remanded to conduct a verification of Guangxi, the order did not restrict Commerce to verify only what Guangxi provided in its questionnaire responses. In responding to the questionnaire, Guangxi completely failed to provide the information on the factors of production for cutting and printing caddies. Consequently, Commerce was prevented from taking caddies into consideration when the original margin was calculated. If the court would accept Guangxi's position, Guangxi would be able to avoid adverse consequences of its failure to provide accurate responses to the questionnaire.

Guangxi also alleges that the issue of the factors of production of caddies was outside the scope of the remand because, prior to the remand, plaintiff did not raise the issue before the court. In challenging Commerce's failure to conduct verification, plaintiff listed in its complaint the specific areas that it urged Commerce to verify during the LTFV investigation. One of those areas was "[t]he packing materials reported by * * * Guangxi in the questionnaire responses." Complaint paragraph 14e. A caddy is "a paper, wood, or metal case used to *package* or display." *Webster's Third New International Dictionary of the English Language Unabridged* 311 (1981) (emphasis added). The verification report of the original LTFV investigation described "Packing Workshop" as follows:

> We observed the following aspects of sparkler packing: pieces of cellophane being pasted along their edges and then folded into polybags; sparklers being counted and placed into the polybags (usually 6 per bag); flat caddies (cut and printed off site with paperboard supplied by the factory) being folded into containers; sparklers in polybags being put into caddies; 12 caddies being bundled together, by hand, with cellophane; bundles were placed onto a wooden "pallet." * * *

R. 1233. Also, in the verification report, the factors of production "for producing the printed caddies from paperboard" were included under the heading of "Packing Labor." R. 1236. Because in this proceeding packing materials include caddies, it was reasonable for Commerce to investigate the issue of caddies.

Since the remand order did not bar Commerce from investigating the information which Guangxi failed to provide in the questionnaire responses, and since plaintiff raised the issue of packing materials in the complaint, the court holds that Commerce did not exceed the scope of the remand order by investigating the factors of production of caddies in the remand proceeding.

2. Whether the use of best information available was appropriate.

Guangxi alleges Commerce should not have resorted to the BIA in determining the value of cutting and printing caddies. During the verification, Commerce refused to accept the new information that Guangxi attempted to submit regarding the factors of production for caddies. Guangxi argues because it was inadvertently omitted from the original questionnaire responses, Commerce should have accepted it.

Commerce's regulation provides that the submission of factual information for the consideration in a final determination shall be made not later than "seven days before the scheduled date on which the verification is to commence." 19 C.F.R. § 353.31(a)(1)(i) (1992). When the submission of the information was untimely, the statute provides for the use of BIA.

> In making their determinations under this subtitle, the administering authority and the Commission shall, whenever a party or any other person refuses or is *unable to produce information requested in a timely manner* and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

19 U.S.C. § 1677e(c) (1988) (emphasis added). Since Guangxi's submission of the information regarding cutting and printing caddies during the verification was untimely, the use of BIA was in accordance with law.

Guangxi also alleges that Commerce should have accepted the new information because the remainder of Guangxi's responses was verified to be accurate. Guangxi relies on a LTFV determination where Commerce accepted new information during and after the verification because "the data appears [sic] reasonable in light of the documents examined at verification." *Color Picture Tubes from Japan,* 52 Fed. Reg. 44,171, 44,186 (Dep't Comm. 1987) (final LTFV determination). Guangxi claims because Guangxi's questionnaire responses were accurate, Commerce should follow its practice in *Color Picture Tubes from Japan* to accept the new information on the basis of the accuracy of the rest of the responses. However, the kind of information received at the verification and the circumstances under which the new information was accepted are not specified in that determination. The court does not find that the practice in *Color Picture Tubes from Japan* requires Commerce to accept Guangxi's new information on caddies which was completely omitted from the original questionnaire responses.

CONCLUSION

The court holds that Commerce conducted the verification of Guangxi within the scope of the remand order. The use of BIA for caddies was in accordance with law since Guangxi's submission of the information was untimely.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
C93/48 5/3/93 Musgrave, J.	Cascades (East Angus) Inc.	91–02–00114	4804.31.60 4.0% 3.2% 2.4%	4804.31.40 80% of duty refunded to plaintiff, balance retained by defendant	Agreed statement of facts	Alexandria Bay, St. Albans, Buffalo Metal interleaving kraft paper
C93/49 5/4/93 Aquilino, J.	E. Gluck Corp.	84–05–00639	716.09–716.45, 715.05, 715.15, 720.24–720.30 various rates	688.40, 688.45, 688.42, 688.36, 656.20 rate in effect on date of entry	Belfont Sales Corp. *v.* United States 878 F.2d 1413 (1989) or Texas Instruments Inc. *v.* United States 673 F.2d 1375 (1982)	New York Digi-ana watches, quartz analog clocks, etc.
C93/50 5/6/93 Goldberg, J.	Consolidated Cigar Corporation	90–09–00473	806.20, 170.15 rate provided under 170.15	Sorting and stemming costs, or only stemming costs plus nine (9) percent profit less (3.1) percent apportioned to the stems	Agreed statement of facts	San Juan, Puerto Rico U.S.-grown wrapper tobacco
C93/51 5/6/93 Restani, J.	Western States Import Co., Inc.	92–11–00727	8712.00.35 11%	Bicycles having wheels exceeding 63.5 cm. in diameter: weighing less than 16.3 kg. without accessories and tires having a cross-sectional diameter exceeding 4.13 cm. 5.5%	Agreed statement of facts	Los Angeles "Avail" model bicycles (sold under "Diamond Back" brand name)

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